

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35602

STATE OF IDAHO,)	2009 Unpublished Opinion No. 637
)	
Plaintiff-Respondent,)	Filed: October 14, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
JOSEPH PRATT,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. John T. Mitchell, District Judge.

Orders denying motions for correction of sentences, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rosemary Emory, Deputy Attorney General, Boise, for respondent.

LANSING, Chief Judge

Following a jury trial, Joseph Pratt was found guilty of several crimes. Subsequent to sentencing, Pratt filed numerous Idaho Criminal Rule 35 motions. Pratt appeals the denial of two of those Rule 35 motions, asserting that three of his sentences are illegal. We affirm.

I.

BACKGROUND

In November 1989, Pratt was convicted of first degree burglary, robbery, second degree kidnapping, ten counts of aggravated assault, aggravated assault upon a law enforcement officer, attempted first degree murder, and first degree murder. The first degree murder conviction was based on two grounds--that the killing occurred during the perpetration or attempted perpetration of robbery, burglary, or kidnapping, Idaho Code section 18-4003(d), and that the person killed was a peace officer acting within the scope of his duties, I.C. § 18-4003(b). In response to a motion pursuant to Idaho Criminal Rule 35 for correction of Pratt's sentences, the trial court

merged the sentences for burglary, robbery, and second degree kidnapping into the sentence for first degree murder. On appeal, the Idaho Supreme Court vacated the I.C. § 18-4003(b) ground for the first degree murder conviction but upheld the I.C. § 18-4003(d) ground, thus affirming the first degree murder conviction. *State v. Pratt*, 125 Idaho 594, 597-98, 873 P.2d 848, 851-52 (1994). Additionally, the Court vacated the conviction for attempted felony murder. *Id.* at 601, 873 P.2d at 855. The Court affirmed all of Pratt's other convictions and sentences. *Id.* at 600-01, 873 P.2d at 854-55.

Pratt subsequently filed a series of motions for reduction or correction of his sentences. Among other issues, Pratt's second through fifth Rule 35 motions raised double jeopardy and merger issues based on the idea that Pratt engaged in one continuous course of conduct, and questioned the continuing legality of the first degree murder sentence. Pratt appealed the denials of only his fourth and fifth Rule 35 motions, and the denials were affirmed. *State v. Pratt*, Docket No. 29866 (Ct. App. Sept. 2, 2004) (unpublished). Only Pratt's sixth, March 23, 2007, and seventh, July 28, 2008, Rule 35 motions for correction of an illegal sentence are at issue in this appeal. Pratt asserts his March 23 motion should have been granted as his sentence for first degree murder is illegal because one ground for the conviction was vacated. Pratt asserts his July 28 motion should have been granted because his sentences for aggravated assault and aggravated assault on a law enforcement officer are illegal as they are multiple punishments for a single act.

II.

DISCUSSION

Under Idaho Criminal Rule 35, the district court may correct an illegal sentence at any time. Whether a sentence is illegal is a question of law freely reviewable by this Court. *State v. Josephson*, 124 Idaho 286, 287, 858 P.2d 825, 826 (Ct. App. 1993); *State v. Rodriguez*, 119 Idaho 895, 897, 811 P.2d 505, 507 (Ct. App. 1991). However, the doctrine of res judicata bars consideration of Rule 35 motions that raise issues already finally decided in earlier Rule 35 motions. *State v. Rhoades*, 134 Idaho 862, 863, 11 P.3d 481, 482 (2000); *State v. Dempsey*, 146 Idaho 327, 330, 193 P.3d 874, 877 (Ct. App. 2008). To hold otherwise would permit applicants to "bypass the normal rules of appellate procedure, rather than filing a timely appeal from the order responding to his first Rule 35 motion." *Rhoades*, 134 Idaho at 863, 11 P.3d at 482 (quoting *United States v. Kress*, 944 F.2d 155, 162 (3rd Cir. 1991)). Pratt asks this Court to

overrule *Rhoades* or limit its application. We have no authority to do so, however, as *Rhoades* is a decision of the Idaho Supreme Court.

In general, res judicata prevents the litigation of causes of action which were finally decided in a previous suit. *Hindmarsh v. Mock*, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002); *Gubler by and Through Gubler v. Brydon*, 125 Idaho 107, 110, 867 P.2d 981, 984 (1994). As a general proposition, res judicata prevents litigants who were parties in a prior action and those in privity with them from bringing or having to defend a claim arising from the transaction or series of transactions giving rise to the first suit. *Id.* at 110, 867 P.2d at 984. Thus, res judicata serves to bar not just claims actually made, but claims related to the same transaction that might have been made. *Hindmarsh*, 138 Idaho at 94, 57 P.3d at 805. The question of whether an action is barred by res judicata is a question of law freely reviewable by this Court. *Rhoades*, 134 Idaho at 863, 11 P.3d at 482; *Dempsey*, 146 Idaho at 329, 193 P.3d at 876.

In this case, Pratt's sixth and seventh Rule 35 motions are barred by the doctrine of res judicata. Regarding his first degree murder sentence, Pratt acknowledges that he previously brought the illegal sentence issue to the district court and did not appeal that court's ruling, but he argues that he is entitled to have this Court rule on the issue anyway. As stated in *Rhoades*, Pratt is not allowed to circumvent the appeals process by filing successive Rule 35 motions. He has already had the opportunity to have the district court consider this argument and chose not to appeal its decision. We hold that the doctrine of res judicata bars Pratt's attempt to relitigate this issue. The same analysis applies to his claim that his sentences for aggravated assault and aggravated assault on a law enforcement officer are illegal because they are multiple punishments for a single act. Pratt has already litigated in prior Rule 35 motions the issue whether double jeopardy and merger preclude multiple punishments because the crimes were allegedly one continuous course of conduct. He now seeks to circumvent the appeals process by reasserting the same issues. We hold that Pratt is barred by res judicata from trying to relitigate the same issues by filing successive Rule 35 motions. Because Pratt's motions are barred by res judicata, we will not discuss the substantive arguments set forth in support or in opposition to the motions.

The orders denying Pratt's Rule 35 motions are affirmed.

Judge GRATTON and Judge MELANSON **CONCUR.**